Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. No. 11 of 2004.

The United India Insurance Company Ltd.,
through its Divisional Manager,
Divisional Office, Tikonia, Nainital Road,
Haldwani, District-Nainital.

..... Appellant.

Versus

(1)Sri Mahima Krishna Uniyal
S/o Pati Ram Uniyal,
R/o Village-Hadiyana, Patti Hindav,
Tehsil-Ghansali, District-Tehri Garhwal.
At present R/o Shanti Nagar, Dhaalwala
Police Station-Muni-ki-Reti,Dist.-Tehri Garhwal.

(2)Sri Bhola Dutt Joshi S/o Sri B.R.Joshi,
R/o Gumaniwala, Post Office-Shyampur,
District-Dehradun.

..... Respondents.

.....

Sri Naresh Pant, learned counsel for the appellant,
Sri Kailash Chandra Tiwari, learned counsel for the respondent No.1.

Dated: 31th August, 2004

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been preferred by the United India Insurance Company Ltd. under Section 30 of the Workmen's Compensation Act, 1923, against the judgment and award dated 03.11.2003 passed by the Workmen's compensation Commissioner/Assistant Labour Commissioner, Garhwal Region, Dehradun in W.C.Case No. 10 of 2002, Sri Mahima Krishna Uniyal versus Sri Bhola Dutt Joshi and another, whereby the Insurance Company was directed to pay the compensation of Rs. 4,35,288/- to the claimant.

2- Brief facts giving rise to this appeal are that the claimant-Mahima Krishna Uniyal was employed as driver under the employment of Opp.party No.1 in Bus No. UP-7J-6365. On 04.2.2002 when he was driving the said vehicle and coming from Tehri to Rishikesh near the station known as Khari, the said bus met with an accident during the course of employment by colliding with Truck No. HR 44-2617. In the said accident the claimant sustained injuries. His right leg was fractured and his left leg became damaged badly. Due to the said injuries, the claimant has become disabled for driving work. He was 40 years old at the time of accident and was getting Rs. 4,000/- per month as salary from the Opp.party No.1. The said vehicle was insured with Opp.party No.2 on the ill fated day.

3- The claimant filed claim petition, on which notices were issued to the opposite parties. The opposite parties filed their separate written statement. The Opp.party No.1 admitted that he is the registered owner of vehicl Bus No. UP 7J-6365 but denied the other allegations made in the claim petition. The Insurance Company-Opp.party No.2 denied the allegations made in the claim petition The learned Workmen's Compensation Commissioner after hearing the learned counsel for the parties and relying on the case law cited by the claimant award the compensation to the claimant accordingly. Feeling aggrieved, the Insurance Company has come up in this appeal.

4- The learned counsel for the appellant contended that the learned Workmen's Compensation Commissioner had erred in not appreciating the contentions of the parties and awarded the excessive compensation. We have gone through the material on record and perused the impugned award. In support of their case before the learned

Commissioner, the claimant produced the documentary evidence regarding the disability. The opposite parties did not adduce any evidence in rebuttal. For want of any evidence by the opposite parties regarding the disability and income of the deceased we find that the learned Commissioner has not committed any mistake in holding that claimant/petitioner has become hundred per cent disabled. There is no reason to interfere with the finding of the learned Commissioner. Accordingly, the appeal has no force on merit.

5- The appeal is dismissed. The impugned order under appeal is affirmed. No order as to costs.

(B.S.Verma,J.) **(P.C.Verma,J.)**

31.08.2004
P.Singh